

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Vince & Sons Co. and Jo Mo Enterprises, Inc. d/b/a Vince & Sons Pasta, alter-ego and/or Golden State Successor and Judella, Inc. d/b/a Vince & Sons Pasta, alter-ego and/or Successor; Robert Okon, an individual and Judith Okon, an individual and United Food & Commercial Workers Local 1546. Case 13–CA–123828

September 12, 2019

SECOND SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN
AND EMANUEL

The General Counsel seeks default judgment in this case on the ground that the Respondents Vince & Sons and Jo Mo Enterprises, Inc. d/b/a Vince & Sons Pasta, Alter Ego and/or Successor (Respondent Vince), Judella, Inc. d/b/a Vince and Sons Pasta, Alter Ego and/or Successor (Respondent Judella), and Judithlynn Okon, an individual (Respondent J. Okon), have failed to file an answer to the supplemental compliance specification and notice of hearing (supplemental compliance specification). The General Counsel seeks partial default judgment on the ground that Respondent Robert Okon, an individual (Respondent R. Okon) has filed a deficient answer to the Supplemental Compliance Specification.

On March 31, 2015, the National Labor Relations Board issued a Decision and Order¹ granting the General Counsel's Motion for Default Judgment on the grounds that Respondent Vince withdrew its answers to the complaint and the first amended complaint. The Board ordered Respondent Vince, in relevant part, to make whole discriminatees Elvia Gutierrez, Rosario Diaz, and Fernando Salazar for any loss of earnings or other benefits they may have suffered due to Vince's unfair labor practices in violation of Section 8(a)(3) and (1) of the Act. On August 5, 2015, the United States Court of Appeals for the Seventh Circuit entered its judgment enforcing in its entirety the Board's Decision and Order.² On February 17, 2016, the Board issued a Supplemental Decision and Order³ granting the General Counsel's motion for default judgment on the ground that Respondent Vince had failed to file an answer to the compliance specification. The Board ordered Respondent Vince to pay the three discriminatees \$106,951, with interest.

¹ 362 NLRB No. 62 (2015) (not reported in Board volume).

² No. 15-2326

³ 363 NLRB No. 121 (2016).

A controversy having arisen over (1) whether additional amounts are owed to the discriminatees; (2) whether Respondent Judella is an alter ego and jointly and severally liable with Respondent Vince to fulfill the remedial obligations of the Board's Order as enforced; and (3) whether Respondents J. and R. Okon are jointly and severally liable for the payment of backpay, excess tax, and interest owed to Diaz, Gutierrez, and Salazar, the Regional Director for Region 18 issued a supplemental compliance specification and notice of hearing on February 7, 2019.⁴ The supplemental compliance specification alleged that additional amounts are owed to the discriminatees; Respondent Judella is an alter ego and successor of Respondent Vince; and that Respondents J. and R. Okon are personally liable for the backpay as described above. Regarding the personal liability of J. and R. Okon, the supplemental compliance specification stated that R. Okon failed to adhere to the corporate formalities in his management and direction of the Respondents Vince and Judella when he conveyed various funds to himself and J. Okon without receipt of equivalent value. It further alleged that this conduct tended to sanction fraud, promote injustice, or lead to the evasion of legal obligations. As a consequence, the supplemental compliance specification requested the Board to pierce the corporate veil and hold R. Okon personally liable to the Board up to the amount of \$150,000 and J. Okon up to the amount of \$218,029.09.

On February 26, 2019, Respondent R. Okon sent the compliance officer for Region 18 an email stating in part that "I deny everything that is within the complaint. The Company was not sold." None of the remaining Respondents filed timely answers to the supplemental compliance specification.

The Subregion 30 Officer-in-Charge, by letter dated March 19, 2019, notified the Respondents that it would accept Respondent R. Okon's email as his answer to the supplemental compliance specification, but that it did not satisfy the specificity requirements set forth in Section 102.56(b) of the Board's Rules and Regulations. The letter further stated that, unless he filed an appropriate amended answer by March 28, 2019, a motion for partial default judgment would be filed with the Board. In addition, the same letter informed the Respondents that Respondents Vince, Judella, and J. Okon had failed to file a timely answer as required by Section 102.56 of the Board's Rules and Regulations and that unless these respondents filed an answer by March 28, 2019, a motion for default judgment would be filed with the Board. To date, Respondent R. Okon has failed to file an amended

⁴ On April 4, 2018, the General Counsel transferred this matter to Region 18.

answer, and Respondents Vince, Judella, and J. Okon have failed to file answers to the supplemental compliance specification.

On June 14, 2019, the General Counsel filed with the Board a Motion for Default Judgment and Motion for Partial Default Judgment, with exhibits attached. On June 19, the Board issued an order transferring the proceeding to the Board and Notice to Show Cause why these motions should not be granted.⁵ Respondents did not respond to the Notice to Show Cause.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment and Motion for Partial Default Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(b) requires that an answer shall specifically admit, deny, or explain each and every allegation of the specification, including obligations to "fairly meet the substance of the allegations" and to provide specific information within the respondent's knowledge regarding "the computation of gross backpay." Finally, Section 102.56(c) provides that if the respondent fails to file an answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the undisputed allegations of the General Counsel's Motion for Default Judgment and Motion for Partial Default Judgment, Respondent R. Okon, despite having been advised on the filing requirements, has failed to comply with the requirements of Section

102.56(b) of the Board's Rules and Regulations by failing to set forth the basis of his disagreement with the amounts of backpay set forth in the supplemental compliance specification and has failed to offer any alternative formula or figures for computing these amounts. See, e.g., *M. D. Miller Trucking & Topsoil*, 363 NLRB No. 49, slip op. at 3 (2015) (citing cases). See also *United States Service Industries*, 325 NLRB 485, 486 (1998) (general denial is not sufficient to refute allegations pertaining to backpay). In addition, Respondent R. Okon has failed to comply with the requirement to "fairly meet" the substantive allegations in the supplemental compliance specification regarding his personal liability for the backpay owed to the discriminatees by not offering a specific response to the General Counsel's detailed statements regarding corporate funds conveyed to J. and R. Okon.⁶ See *Ornamental Iron Work Co.*, 307 NLRB 20, 20 (1992) (respondent failed to provide specific information regarding its alleged reinstatement offers to discriminatees). These failures to adhere to corporate formalities in conveying funds justify piercing the corporate veil and holding both individual respondents personally liable for the backpay at issue in this case. See *White Oak Coal*, 318 NLRB 732, 735 (1995), enfd. mem. 81 F.3d 150 (4th Cir. 1996) (Board will pierce corporate veil "when: (1) there is such a unity of interest, and lack of respect given to the separate identity of the corporation by its shareholders, that the personalities and assets of the corporation and the individuals are indistinct, and (2) adherence to the corporate form would sanction a fraud, promote injustice, or lead to an evasion of legal obligations.") In the absence of good cause for his failure to file a legally sufficient answer, we deem the allegations in the consolidated amended compliance specification to be admitted as true, and we grant the General Counsel's Motion for Partial Default Judgment.⁷

The remaining Respondents, despite having been advised of the filing requirements, have failed to file timely answers to the supplemental compliance specification. In the absence of good cause for the Respondents' failure to file answers, we deem the allegations in the supplemental compliance specification to be admitted as true,

⁵ The Notice to Show Cause was sent to Respondents Judella, J. and R. Okon, and Vince, by certified and regular mail on June 19, 2019. The Respondents Judella, J. Okon, and R. Okon and Vince did not claim this item and it was returned to the agency. It is well settled that a respondent's failure or refusal to accept certified mail or to provide for appropriate service cannot serve to defeat the purposes of the Act. See, e.g., *Cray Construction Group, LLC*, 341 NLRB 944, 944 fn. 5 (2004); *I.C.E. Electric, Inc.*, 339 NLRB 247 fn. 2 (2003) (citing cases). Further, the failure of the postal service to return documents served by regular mail indicates actual receipt of those documents by the Respondent. *Id.*; *Lite Flight, Inc.*, 285 NLRB 649, 650 (1987), enfd. sub nom. *NLRB v. Sherman*, 843 F.2d 1392 (6th Cir. 1988). In any event, the Notice to Show Cause was also served by certified mail on the Respondent's counsel, and the Board subsequently received the postal return receipt card, indicating that the Respondent's counsel received the Notice to Show Cause. *FJN Worldnet, Inc.*, 344 NLRB No. 146, slip op. at 1 fn. 1 (2005); see also *Hopkins Hardware*, 280 NLRB 1296, 1297 (1986) (service of a backpay specification on the respondent's attorney-of-record was valid and sufficient service on the respondent).

⁶ R. Okon's statement that "the company was not sold" is non-responsive to the General Counsel's allegations that monies were conveyed outside of corporate formalities to himself and J. Okon without receipt of any equivalent value to Respondents Vince or Judella.

⁷ Although the General Counsel titled his motion as seeking "Partial Default Judgment" as to Respondent R. Okon, the body of its motion (correctly) characterizes R. Okon's answer to the compliance specification as legally insufficient regarding both personal liability and the computation of gross backpay. We therefore fully grant the requested default judgment as to R. Okon as well as to the other Respondents.

and we grant the General Counsel's Motion for Default Judgment.

Based on the above, we find that Respondents Vince, Judella, J. Okon, and R. Okon are liable for the backpay owed to discriminatees Diaz, Gutierrez, and Salazar. We further conclude that the net backpay due these discriminatees is as stated in the supplemental compliance specification. Thus, we will order the Respondent to pay these amounts to the discriminatees, plus interest accrued to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondents Vince & Sons and Jo Mo Enterprises, Inc. d/b/a Vince & Sons Pasta, Alter Ego and/or Successor; and Judella, Inc. d/b/a Vince and Sons Pasta, Alter Ego and/or Successor, Bridgeview, Illinois, their officers, agents, successors and assigns; and Respondents Robert and Judithlyne Okon, both individuals, shall jointly and severally make whole the discriminatees named below, by paying them the amounts following their names, plus interest accrued to the date of payment, as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as set forth in *Kentucky River Medical Center*, 356

NLRB 6 (2010), minus tax withholdings required by Federal and State laws:

Rosario Diaz	\$50,596
Elvia Gutierrez	\$56,020
Fernando Salazar	\$16,749
Total Backpay Due	\$123,362

Dated, Washington, D.C. September 12, 2019

John F. Ring,	Chairman
---------------	----------

Lauren McFerran,	Member
------------------	--------

William J. Emanuel	Member
--------------------	--------

(SEAL) NATIONAL LABOR RELATIONS BOARD